

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

HOLLEY REALTY, INC., and RUSHBEE CO.,

Plaintiffs,

v.

Case No. 09-CV-1060

SARA JOHANN,

Defendant, Cross Claimant,

v.

CARDINAL STRITCH UNIVERSITY,
UNITED STATES DEPARTMENT OF EDUCATION,
HOLLEY REALTY, INC., and RUSHBEE CO.,

Counter Defendants.

ORDER

Plaintiffs Holley Realty, Inc., and Rushbee Co. filed a small claims action for eviction and unpaid rent against defendant Sara Johann ("Johann") in Milwaukee County Circuit Court. In response, Johann filed an Answer, Counterclaim and Cross Claim against the plaintiffs and against Cardinal Stritch University and the United States Department of Education. Johann's counterclaims and cross claims allege retaliatory eviction, negligent and intentional infliction of emotion distress, and a "conspiracy" between the counter defendants to withhold federal student loan funds in an attempt to have Johann evicted. Johann removed the case to federal court and the plaintiffs quickly filed a motion to remand the case back to the Milwaukee County Circuit Court. This court granted the motion and remanded the case on December 31, 2009, noting that removal seemed to be a tactic to delay eviction.

In an apparent attempt to further delay her eviction, Johann appealed the court's order and seeks a stay pending appeal. However, a district court's order of remand is not reviewable on appeal.¹ 28 U.S.C. § 1447(d); *Perry R. Pennington Co. v. T.R. Miller Co., Inc.*, 994 F.2d 390, 392 (7th Cir. 1993). This is true even if the court's finding that it lacks jurisdiction is incorrect. *E.g. Volvo Corp of America v. Schwarzer*, 429 U.S. 1331, 1333 n.3 (1976); *Ochoa Realty Corp. v. Faria*, 815 F.2d 812, 815 (1st Cir. 1987); *Linton v. Airbus Industrie*, 30 F.3d 592, 595-96 (5th Cir. 1994). Therefore, the court finds no reason to grant a stay pending appeal.


Accordingly,

IT IS ORDERED that the defendant's motion for stay pending appeal (Docket #15) be and the same is hereby **DENIED**.

IT IS FURTHER ORDERED that the defendant's motion for leave to appeal in forma pauperis (Docket #13) be and the same is hereby **DENIED**.

Dated at Milwaukee, Wisconsin, this 8th day of January, 2010.

BY THE COURT:



J.P. Stadtmueller
U.S. District Judge

¹Actions removed pursuant to 28 U.S.C. § 1443 constitute an exception. *Perry R. Pennington Co.*, 994 F.2d at 392. However, § 1443 concerns civil rights actions and, as the court noted in its previous order, Johann does not state any claim related to racial inequality.